

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

DANIEL LOVELACE and HELEN
LOVELACE, Individually, and as Parents of
BRETT LOVELACE, deceased,

Plaintiffs,

vs.

NO.: 2:13-cv-02289 dkv
JURY TRIAL DEMANDED

PEDIATRIC ANESTHESIOLOGISTS, P.A.;
BABU RAO PAIDIPALLI ; and,
MARK P. CLEMONS,

Defendants.

**PLAINTIFFS' MOTION TO STRIKE THE
[CERTIFICATE OF GOOD FAITH OF DEFENDANT MARK P. CLEMONS, M.D.]
UNDER T.C.A. § 29-26-122, (b) AND (c), AND BRIEF**

Come the Plaintiffs, Daniel Lovelace and Helen Lovelace, Individually, and as Parents of Brett Lovelace, deceased, by counsel, who for their Motion to Strike the [Certificate of Good Faith of Defendant, Mark P. Clemons, M.D.] under T.C.A. § 29-26-122, (b) and (c), and brief, state:

1. The Complaint in this matter was filed on May 8, 2013.
2. On June 3, 2013, Defendant, Mark P. Clemons, M.D., filed his Answer [D.E. 11]; in his Answer at ¶ 20, he alleges the fault of a non-party [Exhibit "A"].
3. On May 1, 2014, a Certificate of Good Faith on Behalf of Defendant, Mark P. Clemons, M.D., in Support of Allegations of Fault as to Non-Party [D.E. 99], was filed and served upon Plaintiffs' counsel [Exhibit "B"].
4. Under T.C.A. § 29-26-122(b), the Certificate of Good Faith on Behalf of Defendant, Mark P. Clemons, M.D., in Support of Allegations of Fault as to Non-Party [Exhibit "B"], was required to be filed by Defendant Clemons within thirty (30) days of the date when Defendant alleged

in an Answer or Amended Answer that a non-party was at fault for the injuries of the Plaintiff. Thus, the latest filing date allowed by statute for Defendant to file a Certificate of Good Faith was no later than Wednesday, July 3, 2013. This, the Defendant, Mark P. Clemons, M.D., failed to do.

5. Under T.C.A. § 29-26-122(c) the following remedy is provided to Plaintiffs where, as here, the statute is violated:

The failure of a defendant to file a Certificate of Good Faith in compliance with this Section alleging the fault of a non-party shall, upon Motion, make such allegations subject to being stricken with prejudice, unless the Plaintiff consents to waive compliance with this Section. If the allegations are stricken, no Defendant, except for a Defendant who complied with this Section, can assert, and neither shall the Judge nor Jury consider, the fault, if any, of those identified by the allegations. [Emphasis supplied].

6. Thus, as the Plaintiffs do not “waive compliance,” the instant Motion to Strike “shall” be granted, barring Defendant from an affirmative defense that asserts the fault of a non-party, or causation, in this court and cause.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Daniel Lovelace and Helen Lovelace, Individually, and as Parents of Brett Lovelace, deceased, pray that the Certificate of Good Faith on Behalf of Defendant, Mark P. Clemons, M.D., in Support of Allegations of Fault as to Non-Party, be stricken under T.C.A. § 29-26-122, (b) and (c), which provide that such certificates are untimely, and that the Court shall, upon Motion, strike the affirmative defense of non-party fault from the Defendant’s Answer.

Respectfully submitted,

HALLIBURTON & LEDBETTER

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel of record via the Court's ECF filing system this 9th day of May, 2014:

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MARK LEDBETTER, Certifying Attorney